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TICHBORNE v. TICHBORNE.

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therefore, say that, on the mere statement of the fact, that they never saw him before he left England, and are nevertheless convinced that he is the person he claims to be, they must be obviously false, absurd, and worthless. Neither do I think that any person, having a mind to comment fairly upon the affidavits at all, would have so characterized the affidavits which any person had made in the cause, or would have thought it decent or proper, before any proper argument had been offered to the court on the effect of the affidavits, to say there are the affidavits of thirty-four persons, "many of them are important enough, if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless." Then the article proceeds after that to say: "Perhaps the most important of all is the affidavit of Major Heywood, late of the carabineers, who served with Mr. Roger Tichborne in that regiment for nearly two years." Then the writer gives his statement, in which he says he has no doubt whatever as to his identity. Then it goes on, "There are also the affidavits of two or three persons formerly non-commissioned officers, privates, and servants in the carabineers, who also bear witness that the claimant is co-identical with the Cornet Tichborne, who formerly served with them in that regiment." Then the writer adds this: "No single member of either the Seymour or the Tichborne families, nor any of the numerous officers with whom he served in the carabineers, with the single exception of Major Heywood, have made any affidavits of their belief in the claimant's identity. As, according to the dowager Lady Tichborne's affidavit the claimant's person and manner are little changed, and as his memory is perfect there can be no doubt that when the case comes to be tried the claimant will readily obtain justice. The name of a vessel in the Australian trade, which in 1854 picked up at sea nine shipwrecked persons, maintained them on board for three months, and landed them at Melbourne, can easily be ascertained; it is more than probable that some of the other survivors of the wreck of the *Bella* may be in existence, the gentleman by whom Mr. Roger Tichborne was educated at Stonyhurst, and the Roman Catholic priest by whom his religious exercises were directed, must be accessible, and at least a score of his brother officers in the carabineers will be available, and unbiassed witnesses as to his identity."

And then there is this:—"We happen to know as a fact that several of his relations have had interviews with the claimant, and have failed to recognize him, and as we do not find any affidavits from them in corroboration of his identity among the documents now included in the volume now before us, we presume they have failed to recognize in the claimant their long lost relative." This is an argument, and a powerful argument addressed by this person, whoever he may be, who wrote this article, against the claim made by the plaintiff; and that powerful argument not only indicates the bias of the writer's mind, but it is coupled with the observation that many of the claimant's witnesses would be important if they could bear cross examination in the witness-box, and that many of their statements are "obviously false, absurd, and worthless." It appears

to me plain and manifest that this is a most improper interference with the administration of justice. I shall reserve what is to be done until I have heard the other cases.

There were similar motions against other newspapers. The first of these were against the *Times* and the *Morning Advertiser*, which papers had simply published the article complained of as an extract from the *Pall Mall Gazette*.

*Roxburg, Q C*, and *A. G. Marten*, appeared for the *Times* and the *Morning Advertiser*, and submitted that as these papers had merely copied the article and made no comments of their own, they ought not to be made to pay the costs of the motion.

The next motions were those against the *Southampton Times* and the *Hampshire Chronicle*. The *Southampton Times* had printed a synopsis of the evidence without any comment.

*Shelbeare* appeared for this paper and submitted that nothing could be less objectionable than their synopsis, which was all in favour of the plaintiff.

[*Wood, V C*—I think, Mr. Giffard, you might have given them a simple notice not to print this.]

The case of the *Hampshire Chronicle* was similar.

*W. W. Cooper*, appeared for this paper, which he submitted had not been guilty of any contempt of Court. The only case where parties had been committed for merely publishing affidavits was that of *Cann v. Cann*, reported in a note to *Matthews v. Smith*, 3 Hare, 383, and in that case the circumstances do not appear.

The remaining motions were against the *Hampshire Independent* and the *Morning Post*.

It was alleged by the plaintiff that the *Hampshire Independent* had published extracts from the affidavits, and also re-published the article from the *Pall Mall Gazette*, after the plaintiff had given them notice of motion.

*Higgins*, for the *Hampshire Independent*, asked for leave to answer this evidence.

The *Morning Post* had published extracts from the plaintiff's affidavits in an article which ended by stating the effect from the evidence, which it would probably be produced from the defence.

*Kay, Q C*, for the printer of the *Morning Post*, submitted that he had committed no contempt. If he had done so, he made a humble apology for it.

*Sir R. Palmer, Q C*.—Perhaps your Honour will allow me to say, on behalf of Mr. Sharpe, the publisher of the *Pall Mall Gazette*, that, of course, it was not his intention to commit a contempt of this Court, and of having been informed of your Honour's judgment he makes his humble submission and apology in the most respectful way.

*Wood, V C*.—That is a very proper course and I am now glad that I suspended my judgment as to the *Pall Mall Gazette*, which has been the source of the evil as regards the *Times* and the *Morning Advertiser*; but, after the submission which has been made, I think it is quite sufficient for the purposes of justice to order the *Pall Mall Gazette* to pay the costs of the motion.

With regard to the other newspapers, although it is no defence to say they did it through ignorance, I am bound to say with regard to the country papers, which are not in the hands of new